IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 353 of 2006

STATE
V/S
MANAK LAL & ANR.

Mr. HR SONI, for the appellant / petitioner

Mr. MANISH SHISHODIA, for the Plaintiff Respondent

Mr. D.R. Bhandari for the Defendant Respondent

Date of Order : 20.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties, and perused the record.

The two learned courts below have decreed the suit for eviction concurrently, on the grounds of reasonable and bonafide necessity, and by deciding the aspects of comparative hardship, and partial eviction, and default, against the appellant.

Arguing the appeal it was contended by the learned counsel for the appellant, that relationship of landlord and tenant is not established, and that the learned trial court has erroneously proceeded with the assumption, that

it is an admitted position, while it is nowhere an admitted position. The other submission made is, that the property is alleged to have been sold by Tilkayat Shri Govindlal Ji to the plaintiff, but then the sale has not been proved, the document Ex. 1 has not been proved. Likewise, Tilkayat Ji had no right to sale the property, because in the award of the Bombay High Court being Ex.A-1, the property was found to be of the deity, the deity being a perpetual minor, the property could not be sold. Likewise, it was also contended, that even a look at the sale deed itself shows, that it does not purport to be by or on behalf of either the deity, or the temple board, and that since the property did not belong to Tilkayat Ji, he could not obviously sale it. It is contended, that until and unless it is shown that the property belonged to Tilakayat Ji, it could not be sold. It was also contended that the sale deed purports to be executed by power of attorney, but that power of attorney has also not been produced on record, signatures on sale deed has not been proved, passing of consideration of sale has also not been proved. Then, it is also contended that the agreement to sale purports to be of the year 1971, wherein entire amount was paid, and the right to receive rent was also transferred to purchaser. In such circumstances, it does not stand to reason, that the purchaser would lie low for more than decades. It is then contended that there is no receipt about payment of rent in favour of plaintiff, or Tilkayat Ji, and merely by reply to

star question Ex.8, the tenancy cannot be established, as that does not fall within the four corners of Section 107 of the Transfer of Property Act. Learned counsel also relied upon Section 109 of the Transfer of Property Act, to contend, that unless there is valid transfer by the lesser, the transferee cannot file a suit for eviction. It was also contended, that the plaintiff has claimed the decree, in alternative, in favour of defendant no.2, which firstly shows that the defendant himself was not sure about his title, and secondly the plaintiff has no right to claim any decree in favour of co-defendant. Interalia on these contentions, it was contended that the impugned decrees are liable to be set aside.

Learned counsel for the respondent, on the other hand submitted, that the arguments raised by the counsel for the appellant, are beyond the pleadings on record, inasmuch as there is no pleading about the property being belonging to deity, rather a specific pleading is, that the property had fallen to the temple board, and therefore, most of the arguments go. My attention was also invited to para-13 of the written statement, and it was also submitted that it is precisely for this reason that no issue in this regard was framed. Learned counsel relied upon Ex.9 dt. 10.3.92, whereby the resolution of the temple board was communicated, authorising Tilkayat Ji to execute the sale deed. It was contended that no evidence has been led on the

side of the appellant before the learned trial court. Then, learned counsel read to me certain portions of the judgment of the learned lower Appellate court on page 9, to support the stand that the property was validly sold vide Ex.-1.

Learned counsel for the appellant, in rejoinder, read to me page-2 of the written statement, wherein it has been contended, that it is wrong that Tilkayat Ji sold the property on 14.5.1971, as under law it could not be done without it being properly stamped and registered document, and therefore, it cannot be said that the property was given to the plaintiff. Regarding sale deed dt. 13.6.92, it was pleaded, that even if such sale deed has been got registered, still as is being pleaded in the forth coming paragraphs, Tilkayat Ji has no right to sale, or execute sale deed, and therefore, it does not confer any rights on the plaintiff.

I have considered the submissions, and have gone through the record, so also the judgments of the two learned courts below.

So far the proof of execution of the sale deed Ex.-1 is concerned, I may straightway read the affidavit of P.W.7, who has clearly deposed to be the general power of attorney of Tilkayat Ji, right from 1992 till the life of Tilkayat Ji, and he has deposed, that as per directions of

Tilkayat Ji, he produced the sale deed before the Sub Registrar, and got it registered, which is Ex.-1, whereon, on each page it bears signature of Tilakayat Ji at A to B, which he knows very well, and also proves the signatures A to B on annexed site plan. Significantly in cross examination this part of evidence has not been assailed, except asking one question, that he received the sale deed duly executed, but then, when he has proved the signatures of Tilkayat Ji, on the basis of his knowing the signatures, and on this aspect, the witness has not been cross-examined at all. In that view of the matter, the contention raised about the proof of the sale deed need not detain me. Likewise, the contention about the power of attorney having not been proved also need not detain me, as the sale deed is executed by Tilkayat Ji himself, and has simply been produced by the power of attorney, before the Sub Registrar, and has been duly registered. Then, so far as the question of status of the defendant appellant being tenant is concerned, of course in the written statement it has not been admitted, but then, significantly there is no specific denial either, and simply the plaintiff has been called upon to prove everything, and the defendant has not taken any positive stand about its capacity of possession. In that background, a look at the evidence of P.W.1 shows, that he has clearly deposed that the suit premises were on rent with the State Government the defendant from Tilkayat Shri Govindlal Ji, on a monthly rent of Rs. 3/-, wherein

the office of circle inspector of police was functioning. In cross-examination this part of the evidence of this witness has not at all been assailed, rather the cross-examination was directed substantially towards the right of Tilkayat Ji to execute the sale deed, or about the reasonable and bonafide necessity of the plaintiff, or the like. Thus, the evidence of this witness P.W.1 goes un-assailed. This, coupled with the fact, that on the side of the defendant appellant no evidence has been led, except examining D.W. 2, one A.S.I., who neither deposed to be authorised, nor deposed to be having any personal knowledge, and over and above all this, even this witness, who is appearing as defendant appellant, even by word of mouth has also not denied the premises to be in tenancy. That being the position, there is no escape from the conclusion, that the possession of the appellant in the premises is, in the capacity of tenant from Tilkayat Ji at a monthly rent of Rs. 3/-, and it appears, that precisely for this reason, no argument was raised before learned Courts below on the question of nature of possession.

It may further be observed, that no submissions were made on the aspects of reasonable and bonafide necessity, or comparative hardship, or partial eviction, or other ground of default, found by the learned Courts below. To repeat, the whole thrust of the argument, may be by putting it in different forms, or being advanced from

different aspects, the thrust of the contention is, that Tilakayat Ji had no right to sale the property, Tilakayat Ji did not sale the property, the property did not belong to Tilakayat Ji, and thus the plaintiff does not get any right to evict the appellant, more so on the face of Section 109 of the Transfer of Property Act.

In my view, so far Section 109 of the Transfer of Property Act is concerned, that does not help the appellant, in view of the findings recorded above, specially on the face of evidence of P.W.1, that the defendant was tenant of Tilakayat Ji, and Tilkayat Ji has executed registered sale deed Ex.1, and thereunder the plaintiff claims. In a suit for eviction it is not open to the tenant to contest, or defend the suit, on the ground of landlord not having right title or interest in the property, or that on that basis the transfer by him does not confer any right on the transferee plaintiff. In that view of the matter, I do not find any of the substantial question of law involved in the appeal to be arising.

A contention of course, was raised before me, that from the star question being Ex.8 and its reply, the tenancy cannot be established. Suffice it to say, that except making this oral submission no legal authority was cited to substantiate the contention. Then a look at the plaint shows, that the defendant is the State of Rajasthan,

and the reply given in Ex.8 is on behalf of the State. Therefore, it is clearly an admission on the part of the defendant, as contained therein, and the oral submission is being made in an attempt to get out of it, while no such thing was submitted before the learned courts below.

The appeal thus, has no force and is dismissed summarily.

(N P GUPTA),J.

/sushil/